(1) Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

GYORGY FODOR,
Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,
Respondent,

TIME WARNER INC., et al.,
Real Party in Interest.

On Petition For Writ of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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82 pp

INTRODUCTORY STATEMENT:

This matter concerns years of judicial corruption in district court and committed efforts of the circuit court to help cover up the same. The U.S. Supreme Court should raise its voice to make it clear that nobody is above the law. Not even federal judges, nor multi-billion dollar corporations. The American public deserves no less. This Petitioner's web site, **www. corrupt U.S. judges.com.**, shall inform the public as the case unfolds.

QUESTIONS PRESENTED FOR REVIEW:

1. Can a U.S. District judge authorize a party to a litigation, or another non-judicial person to decide a Summary Judgment motion and Grant of Attorney's fees; or such proceedings of the district court are in the

absence of all jurisdiction, therefore null and void, because jurisdictional issues cannot be waived?

2. Is it a conspiracy to obstruct the due administration of justice in violation of 18 U.S.C. 1503 when a U.S. district judge instructs his staff to rubber stamp his hand-written signature on court documents granting Summary Judgment and on an Order granting Attorney's Fees in excess of $169.000.00 decided by non-judicial persons in order to make it appear that these judgments and orders are the U.S. District judge's own legitimate decisions?

3. Does a Court of Appeals have jurisdiction, power and duty to review and investigate, if necessary, claims of fraud

perpetrated on it by a former U.S. District judge, and must vacate void court documents entered in the absence of all jurisdiction?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is subject of this petition as follows:

Gyorgy Fodor;

Petitioner.

United States District Court

for the Central District of California;

Respondent.

Time Warner Inc.;

Warner Communications Co,;

Warner Books, Inc.;

Warner Brothers, Inc.;

Jack Merek.

Dennis Anderson

Respondents, Real Party in Interest

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IN THE

SUPREME COURT

OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals for the ninth circuit appears at Appendix pages A-1 to A-2 to the petition and is unpublished.

The opinion of the United States district court decided by Time Warner Inc,. in absence of all jurisdiction appears at Appendix pages A-3 to A-22 to the petition and is unpublished.

JURISDICTION

The date on which the United States court of appeals for the ninth circuit decided the above matter was Jun. 28, 2000.

No petition for rehearing was timely filed in this case.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE III

UNITED STATES CONSTITUTION.

Section 1. Supreme Court and inferior courts -- judges and compensation.

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

The judges, both of the supreme and inferior Courts shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

18 U.S.C. 1503

Influencing or injuring officer or juror generally.

Whoever corruptly, or by threats or force, or by any threatening letter or communication endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on

account of the performance of his official duties, or corruptly or by threats or force. or by any threatening letter or communication, influences, obstructs or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

STATEMENT OF THE CASE

Petitioner Fodor brought this action in the Central District of California on May 2, 1990, invoking federal jurisdiction for Copyright Infringement under 28 U.S.C. 1338(a) and federal jurisdiction for the State's Unfair Competition claim under 28 U.S.C. 1338(b)

Respondent Time Warner Inc., defended the action by manufacturing forged, back-dated evidence to show earlier independent creation. One of the leading questioned document experts in the world testified in his deposition that the two checks purported to show payment to the infringing work's alleged author by Time Warner Inc., could not have been genuine.

Petitioner Fodor proved on numerous occasions that in order to reverse the U.S. District judge's earlier denial of Time Warner Inc.,'s Summary Judgment motion, Executive Vice President of Warner Bros. Inc. John Schulman, and Time Warner's outside counsels, William Rintala and Sharon Oxborough, corruptly influenced the District judge's law clerk(s) so that the grant of Summary judgment decided by Time Warner Inc. in their own favor, as well as attorneys fees in excess of $169.000.00 would be rubber stamped with judge Ideman's engraved hand-written signature and then filed into the court records as genuine decisions of the District judge.

It is important to note that there was never a hearing or an oral argument in district court in this case, and no appearance before Judge Ideman was ever allowed, except for a two-minute trial setting conference right after the denial of Time Warner's summary judgment motion in January 1991.

Petitioner Fodor has argued on appeal of the case the above chain of events, supported by a plethora of evidence, and despite that one of the appellate judges, judge Noonan, understanding fully what was going on, questioned Time Warner's attorney Rintala, finding that some of the writing within the Order granting Time Warner's Summary judgment motion read as if it had been

written not by a judge but by a lawyer, "to the Court" not "by the Court"; in a shameful and bizarre order, on March 2, 1994 the Ninth Circuit Court of Appeals affirmed these fraudulent court documents decided by Time Warner Inc.,.(See, Appendix pages: A-3 - A-22)

Petitioner Fodor filed a Judicial Misconduct Complaint in October of 1993 with the former Chief judge of the Ninth Circuit, Judge Wallace, accusing judge Ideman of impeachable criminal misconduct.

Wayne Duband, former President of Warner Bros. International conceded to Fodor in November 1994 that in fact Fodor created his screenplay first, thus, all the documents produced by Time Warner Inc., showing

earlier creation are forgeries. Duband advised Fodor that he never should quit fighting this matter, but cautioned, that it will be an uphill battle. Duband mentioned that Chief judge Wallace was in contact with Warner Bros. Executive Vice president and General Counsel John Schulman to coordinate actions as how to best silence Petitioner Fodor.

Indeed, while a Chief judge shall rule on a judicial misconduct complaint within thirty days, judge Wallace delayed any action on Fodor's misconduct complaint for over one year.

Further efforts to silence Fodor consisted Time Warner's attempts to collect the $169.000.00 in attorney fees they awarded themselfs with.

When that fraud didn't work, federal magistrate Stone was brought in to order Fodor to pay Time Warner Inc., $250.00 per day for essentially having filed a judicial misconduct complaint against judge Ideman.

As soon as this shake down didn't work either, Time Warner Inc., was trying to get an order to "confine" Fodor for contempt of court.

When none of these organized crime tactics coerced Fodor into silence, former chief judge Wallace dismissed Fodor's misconduct complaint stating that its 21 pages length was too long.

Whether a twenty one page misconduct complaint is permissible or not, may be up for an independent review. However,

the American public would be so much better off if a federal judge who needs over one year to decide this, would be removed pursuant to 28 U.S.C. 372(c) for mental disability, instead of being trusted to decide matters affecting personal freedoms.

Petitioner Fodor re-filed a shorter version of the misconduct complaint and finally, former Chief judge Wallace opened a "preliminary investigation" looking into Fodor's judicial misconduct complaint, during which ,judge Ideman admitted that he.... **"authorized the stamped orders in question and instructed his staff to rubber stamp them with his signature"** (emphasis added). See, Appendix page: A-26.

Chief judge Wallace bent over backward

to rule, in a clear-cut attempt of cover-up, that such conduct was not a misconduct at all.

On October 27, 1999, the Ninth Circuit en banc decision in *Sanders v. Union Pacific Railroad Co.* (1999 Daily journal D.A.R. 10957) (See, Appendix pages: A-30 to A-47) blasted judge Ideman, (the very same judge Ideman Fodor filed his misconduct complaints against years before). calling him a "derelict" and a "renegade" for having routinely transferred his judicial authority to his law clerks, and taking steps in order to cover up such illegal proceedings in District Court.

The Ninth Circuit en banc ruled that such proceedings in district court are in absence of all jurisdiction, therefore null and void.

Although Petitioner Fodor's Judicial Misconduct Complaint filed some 7 years earlier demonstrated the pattern of such impeachable criminal misconduct, judge Ideman was allowed to retire from the Federal bench with full pension benefits, costing taxpayers in the millions over the years. Ideman now sits on the Superior Court bench in Los Angeles on assignment for $400 a day, plus expenses.

Petitioner Fodor thought that finally, the Ninth Circuit recognized what judge Ideman was: a corrupt, lazy judge; and filed a petition to review similar claims Fodor proved years ago.

The Ninth Circuit denied the Petition, ruling that they don't have jurisdiction over

the case, and that Petitioner Fodor's claims are "unsubstantiated".

In denying Fodor's Petition for Review, the Ninth Circuit Court of Appeals appears to protect a criminal corporation, Time Warner Inc, evidenced by their continuing effort to help cover up the pattern of criminal misconduct of judge Ideman, and to deny Fodor undisputable right to recover his substantial damages from Time Warner Inc.,.

In essence, Time Warner Inc., corruptly conspired and still conspire to influence, obstruct and impede the due administration of justice by corrupting judge Ideman's court and conspiring with former Chief judge Wallace to help to cover up the same.

REASONS FOR GRANTING THE PETITION

This matter is probably one of those rare cases where a United States Court of Appeals has entered a decision which sanctioned such a far depart from the accepted and usual course of judicial proceedings by a lower court, as to call for an exercise of this Court's supervisory power, pursuant to Supreme Court Rule 10.(a)

Article III of the U.S. Constitution is supposed to guarantee to the American public, a honest, independent federal judiciary.

When the integrity of the justice system is shaken at its foundation by corruption and conspiracy, when the American public's constitutional rights are infringed by those

who are supposed to protect them, the U.S Supreme Court shall exercise its supervisory power, make sure that corruption, such a cancer on the New Hampshire State Supreme Court and several police departments across the country, shall not spread within the federal judiciary.

This Petitioner has the duty to publicize on the Internet and elsewhere this absolute outrage caused by corrupt judges in the Ninth Circuit. The Public has vested interest, and the right to know that issues affecting personal freedoms are sometimes decided by crooks abusing their offices of public trust for private gain. The Public shall have the power to force changes in the legislation so that corrupt judges will indeed be impeached.

As it is, the law, 28 U.S.C. 372(c), intended to remove corrupt judges from office, is in fact a tool in the hand of Chief Judges and Judicial Councils of the Ninth Circuit to cover up impeachable misconduct defeating legislative intent by the same.

The U.S. Supreme Court has the power, and probably the duty to send a message, by granting this petition, that compromising the authority of the rule of law cannot be sanctioned.

The American Public deserves no less.

Justice Hugo Black wrote in *Hazel Atlas Co. v. Hartford Empire Co.* (322 U.S.238):

> "Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more

than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with good order of society. Surely it cannot be that the preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demand that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud."

The legal questions specific to this case are rather simple. The Ninth Circuit en banc decision in *Sanders v. Union Pacific Railroad Co.*(1999 Daily Journal D.A.R. 10957) (See:

Appendix, pages: A-30 - A-47) makes it clear that a judge cannot transfer his judicial authority to his law clerks or to other non-judicial persons to perform judicial functions.

Obviously, granting a Summary judgment is a judicial function, so is the grant of Attorney's fees in the tens of thousands dollars.

As judge Noonan found, these orders have been written by Time Warner Inc.,'s lawyers "to the court" and not "by the court". Furthermore, judge Ideman's own admission that he merely authorized these judgments and orders makes it clear that he did transfer his judicial authority, and that either Time Warner's attorney John Schulman, or outside

counsel Rintala, or Oxborough, or the three together decided these judgment and orders. They are not judicial persons, but opposing parties in this litigation.

> "Whether a person who is not a judicial officer may preside over a judicial proceeding in the absence of all jurisdiction however, is a jurisdictional issue. *Cf. Mireles v.Waco*,(502 U.S. 9, 11-12 1991) (a judge loses judicial immunity when acting "in the complete absence of all jurisdiction") And jurisdictional issues cannot be waived," *Sanders v. Union Pacific Railroad Co.* (1999 Daily Journal D.A.R. 10957) (See, Appendix page: A-46-47.)

That judge Ideman authorized such proceedings in his court, there

must have been corrupt influence from Time Warner Inc. on the court, in violation of 18 U.S.C. 1503.

> "Whoever corruptly, ...endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than $5000 or imprisoned not more than five years, or both." (18 U.S.C. 1503)

Judge Ideman's price must have been steep, so that in exchange he also authorized Time Warner Inc. to award themselfs with attorney's fees in excess of $169.000.00 which is no less than an outrageous conspiracy to use the federal government's power to extort this Petitioner.

Otherwise, if judge Ideman was confident that his actions are legally correct

and permissible, why did he not let Time Warner Inc.,'s attorney John Schulman or Rintala or Oxborough to sign their own name on these court documents which was decided by them?

Who is supposed to believe that judge Ideman did not try to defraud, in violation of 18 U.S.C. 1503, this Petitioner, the Court of Appeals and the U.S. Supreme Court by ordering his staff, to rubber stamp his hand-written signature on these orders and judgments to make it appear they have not been decided by Time Warner Inc.'s attorneys, but by judge Ideman? Judges Wallace and Ideman must believe the American public is dumb. What a disgrace.

Anybody shall understand that such

actions are illegal and fraudulent, outside of the judge's jurisdiction, therefore those rubber-stamped orders are void and a nullity.

Now that the Ninth Circuit determined they don't have jurisdiction over this claim is an outrage. The U.S. Supreme Court clearly decided in *Hazel Atlas Co. v. Hartford Empire Co.* (322 U.S 238) that a Court of Appeals has the duty and the power to investigate claims of fraud perpetrated on it.

Discussed earlier, these judgments and orders entered without jurisdiction are null and void. Moore's federal Practice 3D states at 60.44[5][a]:

"If Judgment is void, Court has no discretion and must grant relief."

It is obvious, there is an ongoing

conspiracy to obstruct and impede the due administration of justice in violation of 18 U.S.C. 1503.

Those federal judges who interpret the law and the U.S Constitution in such way that they may find Judge Ideman's and Judge Wallace's actions in this matter harmless and consistent with the "good Behavior" clause of Article III. of the United States Constitution, are betraying the trust of the American Public.

The U.S. Supreme Court decided in *Toussie v. United States* (397 US 112, 90 S Ct. 858):

> "A conspiracy continues as long as the conspirators engage in overt acts in furtherance of their plot, it being in the

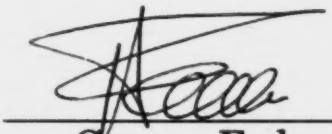
nature of a conspiracy that each day's acts bring a renewed threat of the substantive evil which Congress sought to prevent."

The Ninth Circuit's Order No. 00-70382 finding this Petitioner's claims as set forth above are "unsubstantiated" is nothing less than another overt act in furtherance of the conspiracy to cover up criminal misconduct of judges Ideman and Wallace, and to protect Time Warner Inc., from legal discipline. Such is the threat of the substantive evil which Congress sought to prevent.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Gyorgy Fodor

Date: Oct. 4, 2000

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
JUN 28 2000
CATHY A. CATTERSON,
CLERK
U.S. COURT OF APPEALS

No.00-70382

DC# CV-90-2203 JMI
Central California

ORDER

GYORGY FODOR
Petitioner
v.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF
CALIFORNIA
Respondent,

TIME WARNER INC,; et al.,
Real Party in Interest

Before: FERGUSON, RYMER and

HAWKINS, Circuit Judges

Petitioner has filed a "petition for a Bill of

Review" purporting to challenge this court's unpublished opinion in Fodor v, Time Warner, Inc., 19 F3d 2(9th Cir, 1999) "[B]ills of review... are abolished...." Fed. R.Civ.P.60(b) and we cannot construe the unsubstantiated claims in this filing as any over which we have jurisdiction. Accordingly, the Clerk shall close this action. No motions for reconsideration, rehearing,clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GYORGY FODOR FILED 8-31-92

Plaintiff

v.

TIME WARNER INC., et al.,

Defendant(s)

_____/

CV-90-2203-JMI-(Kx)

ORDER GRANTING DEFENDANT'S' MOTION FOR RECONSIDERATION

ORDER GRANTING DEFENDANT'S' MOTION FOR SUMMARY JUDGMENT

IT IS HEREBY ORDERED:

1. Defendants TIME WARNER INC., et al's (hereinafter "Defendants') motion for reconsideration or, in the alternative clarification of the Court's January 2, 1991

Order denying Defendants' motion for summary judgment is hereby GRANTED. For the reasons set forth below, Defendant's motion for summary judgment is also GRANTED.

2. Before the court is Defendants' motion for reconsideration / clarification of this Court's Order denying Defendants' motion for summary judgment. This lawsuit involves defendants' alleged infringement of PLAINTIFF GYORGY FODOR'S (hereinafter "PLAINTIFF") copyrighted play "Stealth". In its earlier Order, this court held that numerous issues of material fact existed regarding whether Defendants' novel "Target Stealth" was "substantially similar" to Plaintiff's work.

3. By their motion, Defendants seek clarification of three arguments: (1) whether a genuine issue of material fact exists regarding Defendants' prior creation; (2) whether a genuine issue of material fact exists regarding the lack of confidential relationship between Plaintiff and Defendants. and (3) whether a genuine issue of material fact exists regarding Defendants Warner Bros. and Time Warner's involvement -- or lack of thereof -- with Plaintiff.

4. Plaintiff GYORGY FODOR alleges he sent a manuscript of his play Stealth to Defendant TIME WARNER in February 1988. Plaintiff copyrighted his play in October 1987. Plaintiff alleges that

defendants copyrighted a book, Target Stealth, in February 1989, written by Jack Merek, (a pseudonym for Dennis Anderson), which is substantially similar to his own play and thereby an infringement of Plaintiff's copyright.

5. As stated in this Court's earlier Order, summary judgment under Fed. R. Civ. P. 56 is appropriate only if all the evidence in the case indicates that "there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law". Anderson v, Liberty Lobby, Inc. 477 U.S. 242, 254 (1986) This Court's duty is "to determine whether the 'specific facts' set forth by the non moving party, coupled with undisputed background or

contextual facts, are such that a rational or reasonable jury might return a verdict a verdict in its favor based on that evidence." T.W. Elec. Serv. Inc. v. Pacific Elec. Contractors Ass'n, 809 F. 2d 626, 631 (9th Cir. 1987) (citation) (affirming summary judgment for defendants)

A. Prior Creation

Defendants first assert that no genuine issue of material fact exists regarding the independent creation of the work "Target: Stealth." See Meta film Associates Inc. v. Mca Inc. 586 F. Supp. 1346, 1349 (C. D. Cal. 1984) (where defendant's work was written before plaintiff's, there was no opportunity to copy). Specifically, defendants argue that defendant / author Dennis Anderson wrote the allegedly

infringing work, "Target Stealth" in 1986 and, following its purchase by defendant Warner Books, Inc. ("Warner Books"), revised it during the course of 1987. Plaintiff by his own admission, did not submit his work until February 1988, by which time only minor changes were made in "Target Stealth." This undisputed chain chain of events, Defendants argue, entitle them to summary judgment.

This court's review of record shows that the evidence supporting the independent creation of "Target Stealth" is both undisputed and overwhelming. The uncontradicted testimony shows that Defendant / author Dennis Anderson wrote "Target: Stealth" during 1986 and then

mailed it to Clyde Taylor, an agent at Curtis-Brown, Ltd. (Curtis-Brown"), in December of that year. The uncontradicted testimony further indicates that on January 28, 1987, a Memorandum of Agreement was signed by Anderson and Curtis-Brown for the marketing of that novel and that in February 1987 the novel was purchased by Warner Books for $150.000 (**footnote 1, see: on page No. A-18.**) The $150.000 purchase price was payable half on signing of the contract and half on delivery and acceptance of the revised manuscript.

In terms of revisions, the uncontradicted testimony indicates that the novel was first revised between May 1987 and August 1987, with another revision occurring between

September and October of that year. **(footnote 2, see: on page No. A-18.)** Minor copy-editing changes were made in early 1988, with the final page-proofs being approved in June 1988. All of the individuals involved in this process have testified that at no time were they even aware of Plaintiff's work.

The physical documents accompanying Defendants' undisputed testimony -- although surplusage in the Court's view -- are equally compelling. In its motion for summary judgment, Defendants have submitted the initial check representing the $75.000 advance from Warner Books, as well as subsequent tax documentation reflecting this transaction. Defendants have also submitted the various contracts entered into

between the parties reflecting the title of the book, its plot lines, etc. **(footnote 3, see: on page A-18.)** Finally, every stage of the negotiations and revisions of the book "Target Stealth" was memorialized by the parties **(footnote 4, see: on page No. A-18.)** All of these documents reflect that "Target Stealth" was marketed and purchased over a year before Plaintiff submitted his work to Warner Books.

In response to this overwhelming evidence, Plaintiff raises a number of feeble arguments, none of which create a genuine issue of material fact. First Plaintiff asserts that the copyright registration for "Target Stealth" states that the book was completed in 1988 and that this contradicts Defendants' sworn declarations. In fact, the opposite is

true: Defendants all testified that the minor revisions of the work were not completed until June 1988, As such, the registration form is entirely consistent with the testimony before the Court. **(footnote 5, see: on page No. A-18)**

Plaintiff next points to two isolated pages of defendants' draft copy which have the word "Gambit" in the upper left-hand corner, Based upon these two pages (of a multi hundred page book), Plaintiff speculates that the "real" title of "Target: Stealth" was "Gambit". **(footnote 6, see: on page No. A-19)** Accordingly, Plaintiff argues, these two pages create an inference that all of the evidence referring to the work as "Target: Stealth" is fraudulent.

This fanciful construction is simply not a

a reasonable inference to be drawn from the evidence: all of the evidence in this case, including the contract signed between the parties and the title page of the draft itself, show the title of Anderson's work has always been "Target: Stealth". Two deleted words on two pages will not suffice to create a genuine issue of material fact here.

Plaintiff next contends that since Anderson refers to the Stealth bomber as a "subsonic" plane and later describes it as flying at Mach 2 (two statements which are inconsistent), Anderson clearly did not write the book and is lying. Again, this is not a reasonable inference and the Court should reject it.

Finally, plaintiff contests the various documentation before the Court. As first order

matter. the Court notes that even were this evidence not considered, the undisputed testimony alone in this action mandates the granting of summary judgment. Turning to Plaintiff's specific claims, Plaintiff's attorney contend that their review of the various documents reflecting the 1987 purchase of :"Target Stealth" are non-authentic. The Court rejects their observations for three reasons. First, on their face, the proffered arguments are frivolous. Second, neither of Plaintiff's attorneys is a qualified as an expert to testify.regarding authentication. Third, as to the bank documents at issue here, Plaintiff specifically stipulated to their admittance. (**footnote 7, see: on page No. A-19)**

The best best argument Plaintiff could raise,

which he does not, is that "Target: Stealth" was substantially rewritten following the submission of his novel. This claim however, is totally belied by the undisputed testimony before the court. It is also belied by the February, 1987 purchase contract between Warner Books and Curtis Brown. That document describes in detail the plot of the book "Target Stealth" and clearly shows that the book purchased in early 1987 was essentially identical to the allegedly infringing work published in February 1989. See: Exhibit 144.

For all these reasons, Defendants' motion as to this issue is hereby GRANTED as Defendants' motion for summary judgment. This claim is therefore DISMISSED WITH

PREJUDICE.

B. Confidential Relationship.

In light of a ruling that "Target: Stealth" was created independently, no claim for breach of confidential relationship can stand. See Donahue v. Ziv Television Programs, Inc. 245 Cal. App. 2d 593, 54 Cal.Rptr. 130, 132 (1966). Accordingly, this claim is also DISMISSED WITH PREJUDICE.

For the foregoing reasons, Defendants' motion for reconsideration is GRANTED, as is Defendants' motion for summary judgment. Accordingly, Plaintiff's Complaint is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

RUBBER STAMP
JAMES M. IDEMAN
United States District Judge

(footnote 1.) Defendants have also submitted undisputed declarations from other publishers, all of whom received copies of "Target: Stealth" in January 1987.

(footnote 2.) The Court's review of these revisions indicate that while substantial, none of them altered the central premise or major chapters of the book. See: Exhibits 26, 34, 45-6, 52 and 55.

(footnote 3.) All of these documents are admissible under the Business Records exception to the hearsay rule. See: Fed. R. Evid. 803 (6). The Court also believes that this evidence is admissible under the so-called "catch all" exception to the hearsay rule. See: Fed. R. Civ. P. 803 (24).

(footnote 4.) These documents are admissible under a variety of theories. First, they all establish the state of mind of the various parties (i.e. what they were doing and why they did it). Second, the Court also believes that the business correspondence, particularly those involving revisions , qualify as business records since they were developed in the ordinary course of Curtis Brown's and Warner Books' respective operations. Third, and finally, the Court believes that all of these documents are admissible under the catch-all exception of the hearsay rule. See: Fed, R. Civ. P. 803 (24).

(footnote 5.) Moreover, this is also consistent with Anderson's testimony that he used a book which was revised in 1988 as a reference work.

(footnote 6.) It is worth noting the world "Gambit" in both instances was neither underlined, bolded, or placed at the top, centermost portion of the page. The draft copy also indicates that it was deleted.

(footnote 7.) Plaintiff also proferred the unsworn testimony of a purported "expert". Paul West, raising the same issues. The Court rejects this testimony on two grounds. First, the absence of a declaration under oath precludes this court from considering it. See: Fed. R. Civ. 56 (c). Second, even were this court to consider it, Mr. West is not qualified as an expert to testify. See: Fed, R. Civ. P. 702.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GYORGY FODOR FILED 11-9-92

PLAINTIFF CV-90-2203-JMI (KX)

V.

TIME WARNER INC., ET AL

DEFENDANTS

_____/

ORDER GRANTING ATTORNEY'S FEES

IT IS ORDERED:

1. The motion of Warner Bros. Inc. Time Warner Inc., Warner Communications Inc., Warner Books Inc., and Dennis Anderson ("defendants") for attorney's fees came on for hearing before this court on October 26, 1992 at 10:00 a.m. The Court having read and considered defendants' motion, plaintiff's

opposition thereto, defendants' reply and all supporting documents submitted therewith hereby GRANTS defendants' motion on the following grounds:

2. The Court finds that defendants made and served requests for admissions of facts and genuineness of documents pursuant to fed, R. Civ. P. 36. Plaintiff denied defendants' requests and such denial was not made in good faith.

Accordingly, this court orders that plaintiff Gyorgy Fodor pay to defendants their attorneys' fees in the amount of $169,587.50 as defendants' costs of proving the truth of the facts and genuineness of documents pursuant to Fed, R. Civ. P. 37(c).

IT IS SO ORDERED.

RUBBER STAMP
JAMES M. IDEMAN
United States District Judge

JUDICIAL COUNCIL FOR THE NINTH CIRCUIT

In re: Charge of

FILED
NOV - 8 1995

Judicial Misconduct

No. 95-80027

_____/

ORDER AND MEMORANDUM

Before: WALLACE, Chief judge

A complaint of misconduct has been filed against a district judge of this circuit. administrative consideration of such complaints is governed by the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability (Misconduct Rules), issued pursuant to the Judicial Councils reform and Judicial Conduct and Disability Act of 1980. 28 U.S.C. 372(c)

Complainant charges that the judge "corruptly conspired with his Clerk(s), endeavoring to obstruct and to impede the due administration of justice and to use governmental power for extortion in [complainant's case]." Complainant asserts that the judge improperly transferred his authority to his law clerks by giving them a rubber stamp of his signature. The clerks then allegedly entered into a conspiracy, of which the judge either was aware or was made aware by complainant's filings, with the defendants in complainant's case and used the stamp to forge the judge's signature on a number of improper orders which were adverse

to complainant. He further charges that this conspiracy "was made possible by [the judge's] corrupt and incompetent administration of the business of his court," observing that the judge took no action when advised of the conspiracy, "mak[ing] him a co-conspirator." Complainant also interprets the judge's inaction as "an adoptive admission of the veracity of charges of racketeering" Finally, complainant complains that he has not had the opportunity to appear in court and be heard.

Complainant offers nothing more than mere speculation to support his charges. The record offers nothing to

suggest that the judge has improperly transferred his authority, engaged in any conspiracy or condoned any alleged conspiracy by his clerks. there is nothing improper or unusual about a judge using a stamp for his signature. In response to a limited inquiry, THE JUDGE CONFIRMED THAT HE AUTHORIZED THE STAMPED ORDERS IN QUESTION AND INSTRUCTED HIS STAFF TO STAMP THEM WITH HIS SIGNATURE. (emphasis added) This fact does not suggest the web of wrongdoing charged by complainant, or any wrongdoing at all. Nor is the judge's silence in the face of unsubstantiated conspiracy charges evidence of anything. A

complaint will be dismissed if it makes charges that are wholly unsupported. 28 U.S.C. 372(c)(3)(A)(iii); Misconduct Rule 4(c)(3).These charges therefore are dismissed.

To the extent complainant objects to the content of the judge's rulings, his charges should be dismissed. A complaint will be dismissed if it is directly related to the merits of the judge's ruling or decision in the underlying case, 28 U.S.C. 372(c)(3)(A)(ii); Misconduct Rule (4)(c)(2). If complainant wants to challenge the judge's rulings, correct review procedure, "not the procedures for judicial misconduct, [is] the proper remedy." In re: Charge of

Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir 1982. The judicial council, the body that takes action under the misconduct complaint procedure, does not have the power to change a decision or ruling; [o]nly a court can do that" Misconduct Rule 1(e) To the extent complainant alleges improper motivation for the judge's rulings. he has failed to present evidence substantiating the charge. Thus these charges must be dismissed.

Complainant's charge that he was never given an opportunity to be heard is similarly unfounded. It is normally within the discretion of the trial judge when and whether to hold hold a

hearing on any particular issue. The free exercise of this discretion is critical to the "effective and expeditious administration of the business of the courts," not prejudicial to it. 28 U.S.C. 372(c)(1). In this case, the docket reveals that several hearings were held in complainant's case and numerous motions were filed and ruled on by the court. Complainant was given ample opportunity to explain his claim and to articulate his grievances, both in writing and in person. This claim, therefore, is dismissed.

COMPLAINT DISMISSED.

SIGNATURE
Chief Judge

JUDGES

CIVIL PROCEDURE

District court's law clerk can't

conduct final pretrial conference.

Cite as 1999 Daily journal D.A.R.10957.

PHILLIP R. SANDERS

Plaintiff-Appellant

v.

UNION PACIFIC RAILROAD COMPANY

Defendant-Appellee

No. 97-55046

D.C. No. CV-95-04300-JMI

United States Court of Appeals

Ninth Circuit

Filed October 26, 1999

Appeal from the United States District

Court for the Central District of

California JAMES M. IDEMAN, District Judge, Presiding.

Argued and submitted May 5, 1998

Decided September 4, 1998

Rehearing En Banc Granted and Opinion Withdrawn June 15, 1999.

Argued and Submitted August 19, 1999

San Francisco, California

Before: Procter Hug Jr. Chief Judge, James R. Browning, Mary M. Schroeder, William C. Canby Jr.. Diarmuid F. O'Scannlain, Stephen S. Trott, Pamela Ann Rymer, A. Wallace Tashima, Sidney R. Thomas, M. Margaret McKeown, and Kim McLane Wardlaw, Circuit Judges.

Opinion by Judge Rymer; Concurrence by Judge Tashima.

COUNSEL

Charlotte a Costan, Burbank, California, for plaintiff-appellant.

Joseph P. Mascovich, Cosby, Heafey, Roach & May Oakland, California, for the defendant-appellee.

OPINION

RYMER, Circuit Judge

Phillip Sanders appeals the district court's sua sponte dismissal of his action with prejudice for failure to comply with the court's pretrial preparation order.In June 1995, Sanders filed an action against Union Pacific Railroad Company under the Federal Employer's Liability Act (FELA), 45 U.S.C. 51-60. The case was assigned to

Judge James M.Ideman. the Court set a trial date of November 8. Its standard form pretrial conference order also required the parties to submit certain documents twenty one days before trial and others fourteen days before. The form order warned that failure to comply could result in sanctions, including dismissal.As of the pretrial conference, Sanders counsel had not filed a trial brief, memorandum of contentions of fact and law, responses to Union Pacific,s motion in limine, or proposed voir dire questions as he should have. His motion in limine was filed six days late, and his witness, exhibit and expert witness list were

filed the day before the conference, two days late under the order. Counsel failed to meet and confer with Union Pacific despite requests that he do so, as a result of which no joint exhibit notebook, joint proposed jury instructions, or joint trial notebook was submitted. The final pretrial conference was held as scheduled except that Judge Ideman's law clerk presided. Sanders's counsel said that he had been involved in a complex FELA action in Nebraska and asked for an opportunity to explain to the judge why he had been unable to comply with the order. The law clerk told counsel for both parties trial date would be vacated and that

the court would probably set the matter for hearing on an order to show cause. Nevertheless, on November 15, Judge Ideman's courtroom deputy notified counsel that the case had been dismissed with prejudice. That same day the court issued a written order vacating the trial date and dismissing the case pursuant to Federal Rule of Civil Procedure 41(b).(footnote 1) Sanders's counsel then filed a motion to set aside the judgment pursuant to Rule 60(b), which the court denied without a hearing. Sanders urges us to hold that the court was obliged to warn counsel and client of imminent sua sponte dismissal and to have dismissed

without prejudice instead of with prejudice, while Union Pacific argues that the court did not abuse its discretion because Sanders was warned in the order and had clearly failed to comply by the time the pretrial conference occurred. at the same time, Union Pacific acknowledges that the "pretrial conference" wasn't a pretrial conference in the normal sense and that our analysis is hampered by the lack of record about what happened there. We decline to dissect what happened in this case and to prescribe a recipe for how and when an action may be dismissed, with or without prejudice, for failure to follow the pretrial

rules. This is a unique case. Suffice it to say that where, as here, the district judge allow his law clerk to conduct the the final pretrial conference, declines to give counsel an opportunity to be heard before the court, and then dismisses the action sua sponte with prejudice, we cannot the dismissal stand. Counsel was plainly derelict in meeting his Rule 16 obligations, but so was the district judge. In different circumstances, where the district court exercises its own discretion in a deliberate, informed and reasonable way, we would accord it considerable deference. (footnote 2) See, e.g. Malone v

United States Postal serv., 833 F2d 128, 130 (9th Cir 1987). But we cannot see how any deference is warranted in these circumstances. Accordingly, we vacate all orders entered after the pretrial conference and remand for for another district judge to consider afresh how to proceed.(footnote 3) In so doing, we express no opinion about how the new judge's discretion should be exercised. Rather, we simply put the parties back to square one.

REVERSED AND REMANDED

(footnote 1) This order did not touch all of the bases we have previously said a district court must touch before imposing dismissal as a sanction. See,

Dahl v. City of Huntington Beach 84 F3d 363 366 (9th Cir. 1996)

(footnote 2) Likewise, a Rule 60(b) motion and the court's ruling on it may sometimes cure deficiencies in the initial award of sanctions, See, Link v. Wabash R.R. Co. 370 US 626 632 (1962) But the later ruling cannot rescue the earlier one here, since it is inextricably intertwined with the initial order, which resulted from a conference over which the judge did not preside.

(footnote 3) Judge Ideman resigned from the federal bench after the decision was rendered in this case. For this reason we do not need to decide whether

this action should be reassigned to the calendar of a different district judge. It will be necessarily be assigned to a new judge in any event.

TASHIMA, Circuit Judge with whom WARDLAW, Circuit judge, joins, concurring:

I concur fully in Judge Rymer's majority opinion. I write separately to address an additional point.As the majority opinion points out, the so called pretrial conference was presided over by a law clerk. I do not believe there can be any doubt that a law clerk cannot preside over a pretrial conference. Rule 16 specifically provides that the "the court may in its

discretion direct the attorney's for the parties ... to appear before it for a conference .. before trial ... Fed. R. Civ. P. 16(a) (emphasis added) The rule also recognizes that, where authorized by local rule, the conduct of the scheduling and planning conference may be delegated to a magistrate judge. Fed R. Civ. P. 16(b). No such comparable, specific delegation authority appears in Rule 16 with respect to the final pretrial conference. See, Fed. R. Civ. P. 16(d) (footnote 1) From this carefully constructed rule and its narrowly circumscribed delegation authority, it can be gathered that a pretrial

conference is a judicial proceeding and a judicial proceeding can be only conducted by a judicial officer. (Cf. Riley v. Deeds, 56 F3d 1117, 1122 (9th Cir. 1995) (Convening of court by law clerk who directed court reporter to read back testimony to jury in absence of judge was structural, constitutional error requiring reversal). A law clerk is not a judicial officer and cannot conduct a judicial proceeding, including a final, Rule 16(d) pretrial conference. Judge Ideman must have been aware of these strictures because he appears to have taken steps to ensure that the pretrial conference did not became a

matter of record. There is no entry on the docket of this case, no Clerk's minute order, that the pretrial conference was ever held. Nor, contrary to the requirement of the Court Reporters Act, which requires all proceedings of the district court to "be recorded verbatim," 28 U.S.C. 753(b) were the pretrial conference proceedings reported by a court reporter or recorded verbatim by any other way. There simply is no record in the district court that a pretrial conference ever took place.

Yet, in spite of the sub rosa nature of the pretrial conference, Sanders was visited with the ultimate sanction --

dismissal of his case with prejudice -- because his attorney failed to prepare for it. In my view, the pretrial conference was a nullity. a law clerk purported to preside (undoubtedly at the direction of the judge) over a proceeding from which, although held in a district court courtroom, the district judge completely absented himself, and which was not reported. Such a renegade, ultra vires procedure cannot be sanctioned, (footnote 2) A final Rule 16(b) pretrial conference, presided over by a law clerk, from which the judge has deliberately absented himself, is not a pretrial conference within the meaning of Rule

16, therefore, counsel, or an unrepresented party, cannot be sanctioned for being unprepared for such a "conference".

I therefore concur in the disposition reversing the imposition of the sanctions and remanding the case to the district court.

(footnote 1) I note however, that the Magistrates Act authorizes designated magistrate judges "to hear and determine any pretrial matter pending before the court." with certain exceptions 28 U.S.C. 636(b)(1)(A). The Act also provides that "[a] magistrate may be assigned to such additional duties as are not inconsistent with the

Constitution and laws of the United States." 28 U.S.C. 636(b)(3) We need not explore in this case whether these provisions authorize a magistrate judge to preside over a final pretrial conference under Rule 16(d). (footnote 2) Understandably no one objected to the law clerk presiding over the pretrial conference. At oral argument, it appeared that this was the customary manner manner in which Judge Ideman conducted his pretrial conferences. Whether a person who is not a judicial officer may preside over a judicial proceeding in absence of all jurisdiction, however, is a jurisdictional issue. Cf. Mireles v.

Waco. 502 US 9. 11-12 (1991) (a judge loses judicial immunity when acting "in the complete absence of all jurisdiction"). And jurisdictional issues cannot be waived.